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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,419	07/18/2003	Walter Pokorny	IVd06US	4939

7590	01/23/2008
John C. Thompson 69 Grayton Road Tonawanda, NY 14150	

EXAMINER	
LUK, EMMANUEL S	

ART UNIT	PAPER NUMBER
1791	

MAIL DATE	DELIVERY MODE
01/23/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/622,419

**Applicant(s)**

POKORNY ET AL.

**Examiner**

Emmanuel S. Luk

**Art Unit**

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5,9,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,9,20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. Status of claims:

Claims 1-4, 6-8, 10-19 are cancelled.

Claims 5, 9, and 20 are newly amended and pending.

Claim 21 is newly added.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/13/07 has been entered.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 5, 9, and 20 have been considered but are not persuasive. The Applicants have argued that the elements in the preamble should be taken into consideration and in particular for the dental restoration product. Applicants argued concerning the base element, floor surface and the receipt region of claim 5 is distinct from prior art references and that the same could be applied to claims 9 and 21.

The Examiner has taken the arguments into consideration but is not persuaded. The structure taught by prior art references covers the claimed apparatus. In particular, the use of the container for dental restoration product is an intended use of the structure. The only other element at issue in the preamble is the energy source having radiation (light and thermal), these are covered by the prior art references for an energy source that allows for curing. That the element can be used for a dental restoration product or any other material that would be affected by the outside energy source. In regards to the claimed structure of claims 5, 9, and 21, primarily the base element and receipt region and temperature strip, claim 5 states that the base element includes a floor surface and receipt region is disposed centrally on the base element (all taught by the prior art reference) and that extends beyond the floor surface which it does. In regards to the spaced away from the receipt region sufficiently great so that the temperature indicating means cannot be in contact, the claimed structure would also include interpretation of the temperature strip being on a wall surrounding the receipt region with the wall being sufficiently thick that it does not have the temperature strip being in contact with the receipt region.

In regards to the irreversible temperature indicating means, the prior art references teaches temperature indicating means and that they are being reversible does not preclude the concept of irreversible temperature strip means, the prior art references teaches the claimed structure including a temperature sensing means that would indicate concerning the temperature level. Therefore, the argument is not persuasive.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 5, 9, 20, and 21 are rejected under 35 U.S.C. 103(a) as obvious over Christy et al (5786578) in view of St Phillips (4933525).

Christy teaches the claimed device being a container having a base portion (2), removable container cover (3), temperature indicator strip (4) and being placed into a device having an energy source that would irradiate the mass within the container (c. 1, l. 7-9). Additionally, the container cover (3) can also provide as a cover than can shield from irradiation of light.

Christy fails to teach the strip being spaced away from the central region and the color strips.

Phillips teaches the temperature indicators (12, 26) with the indicators being supported by a base and also spaced away from the central region via the walls (16) as seen in Figures 4 and 5.

It would be obvious for one of ordinary skill in the art to recognize that the apparatus taught by Christy also covers the claimed apparatus that is used for polymerization of material in dental restoration and it would also be obvious for one of ordinary skill in the art to modify Christy with the spaced indicators and the colored strip

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indicators as taught by Phillip because it places away from direct contact of the product to be heated.

That the use of an apparatus is an intended use and as such: Intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530. That the claimed invention is used for dental restoration is noted, however it does not further limit the structure.

Faries teaches a temperature sensing strip that includes a temperature scale, changes color or illuminate the scale indicators to visually indicate the temperature within the container (Abstract). It teaches an alternative indication means that provides additional breakdown of the temperature scale instead of the simpler indication provided by Christy of "OK" and "Too Hot". Both references teaches temperature indicating strips and it would have been obvious for one of ordinary skill in the art to recognize the use of either reversible or irreversible temperature strips known in the temperature sensing strip arts for use with the references.

### **Conclusion**

6. Status of claims:

Claims 5, 9, 20, and 21 are rejected.

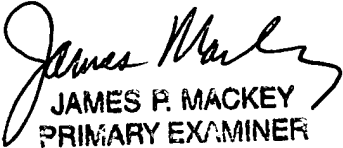
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Fridays from 9 to 5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EL

  
JAMES P. MACKEY  
PRIMARY EXAMINER

1/22/08